May 1, 1893 F-357 Blackf
submitted on Mot for Dismiss
1893, May 18 motion denied
15 18 98

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. ~~1310~~. 149 599 255

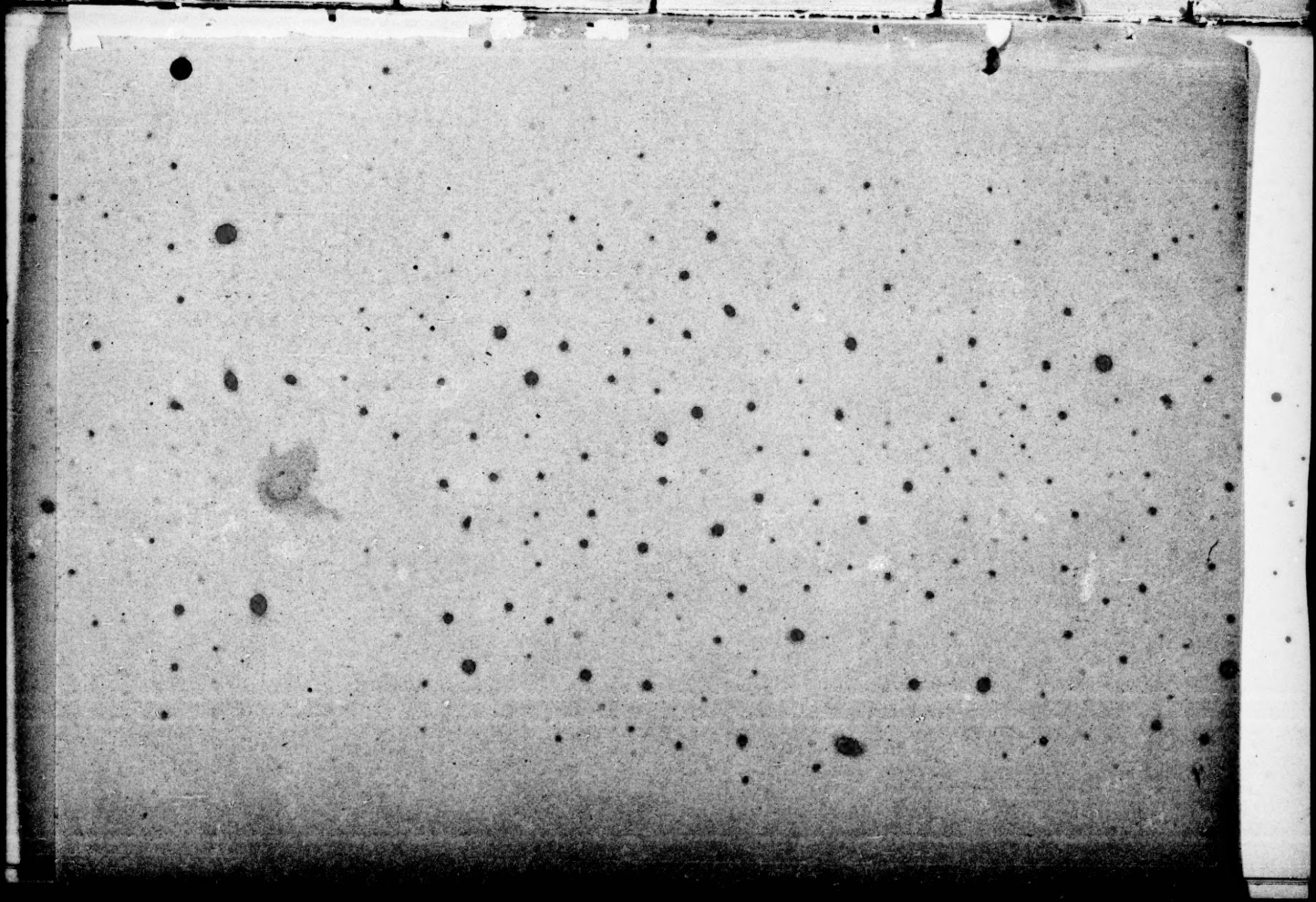
THE GULF, COLORADO & SANTA FÉ RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

HEFLEY & LEWIS, A FIRM COMPOSED OF J. D. HEFLEY AND A. J. LEWIS.

IN ERROR TO THE COUNTY COURT OF MILAM COUNTY, STATE OF TEXAS.

FILED JULY 20, 1891.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 1310

THE GULF, COLORADO & SANTA FÉ RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

HEFLEY & LEWIS, A FIRM COMPOSED OF J. D. HEFLEY AND A. J. LEWIS.

IN ERROR TO THE COUNTY COURT OF MILAM COUNTY, STATE OF TEXAS.

INDEX.

	Original.	Print.
Caption	1	1
Amended complaint	1	1
First amended original answer	4	2
Judgment	7	4
Conclusions of law and fact	8	4
Statement of facts	10	6
Testimony of J. D. Hefley	10	6
Bill of lading	10	6
Testimony of F. A. Barker	11	9
R. Y. Stedman	11	9
H. W. Nott	11	9
J. D. Hefley (recalled)	13	11
H. W. Nott (recalled)	13	11
Judge's certificate to statement of facts	13	11
Defendant's bill of exceptions to conclusions of law and fact	14	12
Defendant's bill of exceptions to overruling demurrers	16	13
Bill of costs	18	14

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 9, 1891.

	Original.	Print.
Clerk's certificate	19	15
Writ of error (copy)	20	15
Bond	22	16
Assignment of errors	24	18
Statement of additional costs	28	20
Clerk's certificate	28	21
Citation (copy)	29	21
Proof of service of citation	30	21

1 & 2 *Caption.*

THE STATE OF TEXAS,
County of Milam.

At a term of the county court begun and held within and for the county of Milam, at Cameron, on the 6th day of April, A. D. 1891, and was adjourned on the 24th day of April, A. D. 1891—the Hon. E. Y. Terral, county judge thereof, presiding—the following cause came on for trial, to wit:

Pl'ffs' Amended Pleadings to Pleading in Justice'- Court.

HEFLEY & LEWIS
vs.
GULF, COLORADO & SANTA FÉ RAILWAY COMPANY. } No. 590.

In County Court, Milam Co., Dec. Term, 1890.

HEFLEY & LEWIS
vs.
G., C. & S. FÉ R'Y CO. } On Appeal fr-m Justice'- Court, Pre. No. 1.

Comes the plaintiffs, leave of the court first had and obtained, and files this *there* amended pleadings to the pleadings of the justice'-court, and, for amended pleadings, aver and charges that plaintiffs, Hefley & Lewis, a firm composed of J. D. Hefley and A. J. Lewis, complains against the Gulf, Colorado & Santa Fé Railway Company, a corporation organized and incorporated under the laws of the State of Texas, and running a line of railway for transportation of freight and persons as a common carrier from Cameron, Texas, thence north to its connection with the Saint Louis & San Francisco Railway Company and on with said last-named common carrier to St. Louis, in the State of Missouri; that said two railways have some agreement, resembling agency or partnership, known to themselves, but unknown to plaintiffs, by which one of said roads makes binding contracts on the other; that H. W. Nott is the local agent of the defendant at Cameron, Texas; that plaintiffs line at Cameron, Texas; that plaintiffs bought of Wolf Kramer Furniture Company, at Saint Louis, one car-load of furniture, which Wolf Kramer Furniture Company, as agents for plaintiffs, delivered to the Saint Louis and San Francisco Railway Co., at Saint Louis, Missouri, to be shipped by them and over their road carried to its connection with defendant, and there to be delivered *to* the said St. Louis and San Francisco railway to the defendant, to be carried to Cameron, Texas, and delivered to plaintiffs for the and in consideration of the sum of 69 cents per hundred pounds as freight charges on said furniture for the whole way from St. Louis, Missouri, to Cameron, Texas, and that said furniture weighed 12,000 pounds, and the aggregated freight due

3 Pl'ffs' pleadings continued.

on said furniture to defendant at Cameron for transportation of said freight the sum of eighty-two $\frac{80}{100}$ dollars, which freight was specified in the bill of lading issued to Hefley & Lewis as consignors; that said bill of lading was issued by said Saint Louis & San Francisco railway over defendant's line of road to Cameron, Texas, by virtue of the aforesaid arrangement between said St. Louis & San Francisco Railway Company and defendant, the full motive of which is unknown to plaintiffs, but which is known to defendant, and that when said goods arrived at Cameron, Texas, about August 11th, 1890, and said defendant presented to plaintiffs and demanded of them the sum of $100.80 *dollars* as freight charges, which was at the rate of 84 cents per hundred pounds, that being a greater rate than is specified in plaintiffs' bill of lading, and plaintiffs refused to pay same and tendered defendant the sum named in said bill of lading, which defendant refused to accept and detained plaintiffs' goods for one day before they accepted the rate named in the bill of lading, by which the defendants incurred the penalty of $82.80, the amount of the bill of lading, for said day's refusal, to which plaintiffs are entitled and for which they now sue; and plaintiffs further allege that by the acceptance of said car of furniture for shipment to plaintiffs from said Saint Louis & San Francisco Railway Company under the contract of said last-named road and by their act of shipment to plaintiffs of said goods and their final acceptance of the $82.80 as freight, as called for by the bill of lading, with full knowledge of all the facts concerning said shipment contract and rate as specified in the bill of lading, the said defendant fully ratified said contract of the St. Louis & San Francisco railway with plaintiffs and adopted it as their contract with plaintiffs and received and ship-ed said goods to plaintiffs *y*nder said contract, whereby defendant has become liable to plaintiffs for said penalty, amounting to $82.80, for which plaintiffs pray judgment, &c.

4 Pl'ffs' pleadings concluded.

E. L. ANTONY & W. T. HEFLEY,
For Plaintiffs.

Indorsement: No. 590. Hefley & Lewis *vs.* G., C. & Sante Fé R'y Co: Plaintiffs' amended pleadings from justice'- court. Filed Dec. 9th, 1890. W. M. Gill, C. C., M. C.

Def't's 1st Amended Original Answer.

In the County Court of Milam County, State of Texas.

HEFLEY & LEWIS
vs.
GULF, COLO. & SA-TA FÉ R'Y CO. } No. 590.

Now comes the defendant and, excepting to plaintiffs' amended pleadings from justice'- court, says that the same are insufficient in law; and of this it prays the judgment of the court.

E. B. MUSE & J. W. TERRY,
Attorneys for Defendant.

5 2nd. For special exception the defendant says that the act of the legislature of the State of Texas under which a recovery is sought is invalid and of no effect, for the reason that it is in conflict with that provision of the Constitution of the United States which gives to Congress the exclusive power to regulate commerce between the States and Territories, and, Congress having fully exercised its power, it is to be presumed that it has prescribed all regulations in respect to interstate shipments that it deemed legal.

E. B. MUSE & J. W. TERRY,
Attorneys for Defendant.

Def't's Answer Continued

3rd. For further special exception defendant says that plaintiffs' pleadings shows — cause of action, because the act of the legislature of Texas in question is repugnent to the statutes of the United States enacted in pursuance of the power of Congress to regulate commerce among the States, in this, that the Texas statutes require a railway company to deliver freight in payment of the rate of freight stated in the bill of lading, while the act of Congress requires delivery only on payment of the regular tariff rate then in effect, regardless of the rate named in the bill of lading.

E. B. MUSE & J. W. TERRY,
Attorneys for Defendant.

4th. For further special exception defendant says that said act of the legislature is repugnant to the laws and Constitution of the United States, in this, that it requires delivery of an interstate shipment by an interstate carrier of goods on certain conditions — are not found in and such penalty — not prescribed by the United States law commonly known as the interstate commerce act, and, such requirements and penalties being omitted from said act of Congress and in all of the subsequent amendments thereof,
6 it must necessarily be presumed that Congress did not intend that the statutes of — particular State should have application, but that the entire body of interstate commerce should be control-ed only by the rules enacted by Congress.

Def't's answer concluded.

E. B. MUSE & J. W. TERRY,
Attorneys for Defendant.

5th. Defendant denies all and singular the allegations in the plaintiffs' petition contained, and says it is not guilty of the wrongs, injuries, and trespasses complained of; and — this it puts itself upon the country.

E. B. MUSE & J. W. TERRY,
Attorneys for Defendant.

6th. Defendant, further answering herein, alleges that the shipment out of which this suit arrises is an interstate shipment, and the statutes of the State of Texas under which recovery is sought is not

applicable to such shipments, because Congress of the United States alone has power to regulate commerce between the States, and, having regulated the same to a great extent, such regulations should be to the e-clusion of all State regulations.

E. B. MUSE & J. W. TERRY,
Attorneys for Defendants.

Clerk's indorsement: Filed April 14th, 1891. W. M. Gill, C. C., M. C.

7 *Judgement.*

HEFLEY & LEWIS
vs.
G., C. & S. FÉ R'Y CO. } No. 590. April 14th, 1891.

This day this cause came on for trial, and came the plaintiffs, Hefley & Lewis, a firm composed of J. D. Hefley and A. J. Lewis, and the defendant, The Gulf, Colorado and Santa Fé Railway Company, by their representative attorney, and announced ready for trial, and came on to be heard the general exceptions of defendant to plaintiffs' cause of action and pleadings. The court overruled the same; to which ruling the defendant excepted; and the matter of fact and law being submitted to the court, a jury being waived, and it appearing to the court from the law and evidence that plaintiffs ought to recover of the defendant the sum of eighty-two $\frac{80}{100}$ dollars—

It is therefore ordered, adjudged, and decreed by the court that the plaintiffs, Hefley & Lewis, do have and recover of the defendant, The Gulf, Colorado & Santa Fé Railway Company, the sum of eighty-two dollars and eighty cents, together with all costs of this suit and in this behalf expended, for which execution may issue.

To the overruling of defendant's exceptions and to said judgment defendant in open court excepted, and gave notice of appeal in open court, and asked the court to file his conclusions of law and fact, which were filed on April the 16th, 1891; to which defendant excepted, and an order of ten days were given by the court to defendant in which to make up and file a statement of facts.

8 *Conclusion of Law & Fact.*

In County Court, to April Term, 1891.

HEFLEY & LEWIS
vs.
GULF, COLORADO & SANTA FÉ RAILWAY COMPANY. }

At the request of the defendant the court files its conclusion of law and fact as follows:

Conclusions of Fact.

1st. On the 11th day of August, 1890, the plaintiffs presented to defendant's agent at Cameron, Texas, his bill of lading for one car-

load of furniture, and tendered defendants $82.80, which was the amount of freight due on the same at the rate of 69 cents per hundred pounds, and 69 cents was the rate stated in the bill of lading, and upon this tender of freight money plaintiffs demanded the delivery of their car-load of merchandise.

2nd. The defendant's agent refused to receive this freight money and refused to deliver the merchandise to plaintiffs, but demanded of plaintiffs the payment of $100.80, as freight due on the same, before said merchandise should be delivered. The plaintiffs refused to pay the $100.80, it being freight on said goods at the rate of 84 cents per hundred pounds thereof, a rate greater than the rate specified in the bil of lading.

3rd. This action of defendant's agent was done by the authority from the general freight office of defendant's company, which had instructed this agent to demand IR cents per hundred pounds of said freight, regardless of the rate stated in the bill of lading and the way bill, which was 69 cents.

4th. The defendant retained the goods of the plaintiffs until the 13th day of August, 1890, when it accepted the rate of 69 cents per hundred pounds of said freight, or the $82.80, the freight required by the bill of lading, and delivered plaintiff's merchandise.

5th. This $82.80 freight money was received by defendant's agent at Cameron by instructions from the general freight office of defendant, which stated that the 69 cents rate, the bill of lading, and way bill had before then *being* agreed upon and was correct.

6th. This was a shipment of freight from Saint Louis, Missouri, on a through bill of lading to Cameron, Texas, to plaintiffs, and was an interstate shipment.

9 *Conclusion of Law & Fact Concluded.*

Conclusions of law.

1st. The law of Texas is that the plaintiffs are entitled to recover of defendants the sum of $82.80, the amount of freight due by the bill of lading, as a penalty for the one day during which the defendant, its agents, officers, and employees, refused to receive that amount from plaintiffs as the correct freight money due bt the bill of lading to defendant, and to deliver to plaintiffs their merchandise after the plaintiffs had tendered said amount to the defendant and demanded said merchandise.

Judgment.

I therefore give judgement for plaintiffs for $82.80.

E. Y. TERRAL.
Co. Judge, Milam Co., Texas.

Indorsement: No. 590. Hefley & Lewis *vs.* The Gulf, Colorado, & Santa Fé R'y Co. Conclusion of law and fact. Filed April 16th, 1891. W. M. Gill, Co. clerk.

10 *Statements of Facts.*

In County Court, Apr. Term, 1891.

HEFLEY & LEWIS
vs.
GULF, COLORADO AND SANTA FÉ R'Y CO. } 590.

Statement of facts.

J. D. HEFLEY, plaintiff, testified in substance as follows:

My name is J. D. Hefley; live in Cameron, Texas; was living here in August, 1890, and engaged in furnature business; was so engaged on August 11th, 12th, & 13th, 1890, under firm name of Hefley & Lewis; have since then bought out all interest of Lewis; had a car-load of furniture shipped from Wolf and Kramer, St. Louis. Said shipment of furniture was consigned to Hefley and Lewis, Cameron, Texas. This is the bill of lading that I received from Wolf and Kramer, St. Louis. (Bill of lading here offered.) (Same here inserted.)

1144.

G. W. Cale,
Freight traffic manager,
Roe building, St. Louis.

C. H. Ivers,
Commercial agent,
St. Louis.

"Frisco line."
St. Louis & San Francisco Railway Co.

Bill of Lading.

ST. LOUIS, *Aug. 4th*, 1890.

Received from Wolf & Kraemer Furniture Co. the following packages, contents unknown, in apparent good order, marked and numbered as per margin:

To be transported by the St. Louis & San Francisco Railway Co. and forwarding lines with which it connects until the said goods or merchandise shall have reached the point named in this contract, on the following terms and conditions, viz: That the St. L. & S. F. R'y Co. and forwarding lines with which it connects, and which receive said property, shall not be liable for leakage of oils or any other kind of liquids, breakage of any kind of glass, earthen or queens ware, carboys of acids or articles packed in glass, stoves, stove furniture, castings, machinery, carriages, furniture, musical instruments of any kind, packages of eggs, or for rust of iron and iron articles, or for loss or damage by wet, dirt, fire, or for loss of weight, or for condition of baling on hay, hemp, or cotton, or for loss or damage of any kind on any article whose bulk requires it to be carried on open cars; nor for damage to perishable property of any kind occasioned by delays from any cause or by change of weather;

Not negotiable.

nor for loss or damage to any article or property whatever by fire or other casualty while in transit, or while in depots or other places of transhipment, or at depots or landings at points of delivery; nor for loss or damage by fire, collision, or the dangers of navigation while on the seas, rivers, lakes, or canals. All goods and property under this contract will be subject, owner's cost, to necessary cooperage or baling, and are to be transported to the depots of the companies or landings of the steamboats or forwarding lines at points receipted to for delivery. It is further agreed that the St. L. &. S. F. R'y Co. and forwarding lines with which it connects shall not be held accountable for any damage or deficiency in packages after the same shall have been receipted for in good order by the consignees or their agents or the next carrier beyond the point to which this instrument contracts. Consignees are to pay freight and charges upon the goods or merchandise, in lots or parts of lots, as they are delivered to them. It is further stipulated and agreed that in case of any loss, detriment, or damage done to or sustained by any of the property herein receipted for during such transportation, whereby any legal liability or responsibility shall or may be incurred, that company alone shall be held answerable therefor in whose actual custody the same may be at the time of the happening of such loss, detriment, or damage, and the carrier so liable shall have the full benefit of any insurance that may have been effected upon or on account of said goods. And it is further agreed that the amount of loss or damage so accruing, so far as it shall fall upon the carrier above described, shall be computed at the value or cost of the said goods or property at the place and time of shipment under this contract. This contract is executed and accomplished and the liability of the companies as common carriers thereunder terminates on the arrival of the goods or property at the station or depot of delivery (and the companies will be liable as warehousemen only thereafter), and unless removed by the consignee from the station or depot of delivery within twenty-four hours of their said arrival, they may be removed and stored by the companies at owner's expense and risk.

Not negotiable.

Notice.—In accepting this contract the shipper or other agent of the owner of the property carried expressly accepts and agrees to all its stipulations, exceptions, and conditions.

In witness whereof the agent has affirmed to —— bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

This receipt to be presented without alteration or erasure.

If 1st class, —— per 100 lbs.; if 2d class, —— per 100 lbs.; if 3d class, 84* per 100 lbs.; if 4th class, —— per 100 lbs.; if special, —— per 100 lbs.

Charges advanced, ——.	Description of articles. 10,000 min.	Weight, subject to correction.
Marks, consignee, and destination. Hefley & Lewis, Cameron, Texas.	One car of furniture. Loaded by shipper. Rel. O. R. C. H. Ivers, M.	
This contract is from St. Louis, Mo., to Cameron, Tex.		

The rate of freight for the transportation of the articles named herein from place of shipment to place of consignee is guaranteed not to exceed the rate named herein and charges advanced, provided contents and weight of packages as noted herein are correctly stated. It is, however, further understood and agreed that only approximate weights are signed for; the correct weights and classifications are to be ascertained and collected for at destination.

[Printed upon the face in red ink:] Original.
[Written upon the face in black ink:] 2 69.

The freight in bill of lading is 69 cts. per hundred pounds, which amounted to $82.80.

Mr. Nott, agent of G., C. & S. F. R'y Co., demanded of me $100.80, which was 84 cts. per hundred pounds, for said freight. This was on August 11th, 1890. I gave the money, $82.80, the amount of freight in bill of lading, which was at the rate of 69 cts. per hundred pounds, to my drayman, Mr. F. A. Barker, to tender to Mr. Nott, agent of defendant, and demand freight. Mr. Barker brought the money back, as Mr. Nott did not receive it. I gave money, $82.80, amount of freight.

I gave Mr. Baker, my drayman, bill of lading and amount of money called for in bill of lading, $82.80, again on August 13th. Mr. Nott received money, $82.80, and gave Mr. Baker the freight.

* Erased in copy.

On cross-examination the witness, J. D. HEFLEY, testified *il* substance as follows:

I did not make tender of money to Mr. Nott myself; I sent it down by my agent, Mr. Barker; $82.80 was amount of money I gave Mr. Barker, same amount as was called for in bill of lading at 69 cts. rate. I do not remember whether I gave Barker the $82.80 to make tender for freight on the 11th or 12th of August. I talked to Mr. Nott before freight was delivered. He showed me his expense bill; it called for 84 cts. tariff rate. He said he would
11 be compelled to protect the rate, as he had had no notification of change in tariff rate. I do not recol-ect Mr. Nott comeing down on evening of 12th of August and telling me that I could get my freight.

I know my freight was detained a day, part of two days, after tender of freight, $82.80, was made. I do not know who put the rate in bill of lading. There was 84 cts. in bill of lading just below 69-cts. rate, but a pen had been drawn through the *64*-cts. rate twice. I did not do it; do not know who did. The bill of lading came to me in that condition, and was so presented to Mr. Nott. (Plaintiffs here introduced the bill of lading.)

Statement of facts cont.

F. A. BARKER testified as follows in behalf of plaintiffs:

I was in the dray business in August, 1890. I was ha-lling freight for Hefley & Lewis nearly every day at that time. Mr. Hefley gave money to pay freight on car-load of furniture. He gave me $82.80. I presented bill of lading to Mr. Nott, and at same time made tender of the *the* freight due as per bill of lading, $82.80. Mr. Nott declined to let me have freight; said his tariff called for 84 cts. The bill of lading called for 69 cts. I do not now remember the day of month on which I made tender of money. It was same day Mr. Hefley gave me money. I got, did get, the freight a day or two after that. I was acting as Mr. Hefley's agent in presenting bill of lading and making tender of money.

R. Y. STEDMAN testified for plaintiffs in substance as follows:

I remember transaction of Mr. Barker tendering some money to Mr. Nott, ag't of defendant company. I was present at the time. Mr. Baker called me in to witness the tender of money for some freight that belong- to Hefley & Lewis. It has been so long ago I have forgot the amount. I counted it, but cannot remember the amount now. Mr. Nott declined to take the money; said it was not enough.

H. W. NOTT testified for defendant in substance as follows:

I am agent, at Cameron, Texas, of the defendant, The Gulf, Colorado and Santa Fé R'y Co., and was on the 11th, 12th, and 13th of August, 1890. F. A. Barker tendered me $82.80, amount of
12 freight as shown by bill of lading for a car-load of furniture consigned to Hefley and Lewis, at Cameron. The tender of

$82.80, amount of freight by bill of lading, was made on the 11th of August, 1890, about noon of that day. I refused the amount of $82.80 as being insufficient, for the reason that my tariff rate for this shipment was 84 cts. per hundred pounds, which amounted to $100.80 for said shipment. I told Mr. Barker when he tendered me money, $82.80, that my tariff rate from said point was $-.84 cts. I did not deliver the freight. I told him I would telegraph at once and find out if there was such a rate as 69 cts., as I had received no notification of a change from my then present tariff rate, 84 cts. I telegraphed im-ediately; telegraphed the same day, but the wires were working badly, and I did not get or recieve a reply until some time in the day of the 12th. I at once notified Messrs. Hefley & Lewis that I would protect said bill of lading; that said 69 cts. in bill of lading was correct. My instructions come from general freight agent of defendant company. I had received no instructions of change of tariff rate previous to that date. My regular tariff at that time, at the time Hefley & Lewis' shipment came, was 84 cts. per hundred pounds. The regular printed tariff came about the 13th or 14th of August—about a day after the car was delivered to Hefley & Lewis. I protected said bill of lading and delivered said car of furniture at the rate specified in bill of lading, which was 69 cts. per hundred pounds. My printed tariff rate at the time of receiving furniture and at the time of tender — money, $82.80, by Mr. Baker was 84 cts. per hundred pounds.

Statement of facts cont.

On cross-examination H. W. NOTT testified in substance as follows:

My instructions were to protect only properly published tariff rate, regardless of rates specified in bills of lading. My published tariff rate at the time that the $82.80 was tendered me was 84 cts. per hundred pounds and not 69 cts., as called in bill of lading. I had not been notified or advised that there had been any change in the tariff rate. When the $82.80 was tendered me by Mr. Barker for Hefley & Lewis, I told him I could not receive same, as it was not my rate; that my rate *that my rate* was 84 cts. per hundred pounds, and $82.80 was not enough; that I would have to have $100.80. I told him I would telegraph at once and find out whether the rate had been changed or not. I did telegraph at once, 13 but did not get any reply until next day, as wires were working badly. I telegraphed general freight agent of defendant company. I received my instructions from general freight agent of company next day to go ahead and protect bill of lading and deliver freight at 69-cts. rate; that it was al- right. I delivered freight on wire of general freight agent of defendant company. Both the bill of lading and way-bill of Hefley & Lewis' shipment of goods called for 69-cts. rate. My tariff rate from those points at that time, however, was 84 cts., and I had not been notified of any change in rate. My instructions were then, and are now, to demand freight as per published rates, regardless of bill of lading.

Statement of facts concluded.

J. D. HEFLEY, plaintiff, being recalled, was asked by counsel the following questions, and answers thereto elicited in substance as follows:

Question. Did you receive any information as to any change in freight rates reducing same from St. Louis?

Answer. I did.

Question. Did you do anything to get advantage in change of rate or reduction of freight rate?

Answer. I did.

Question. What was it?

Answer. I paid the railway company $1.00 to hold car for me one day in St. Louis to get that rate—paid the $1.00 to Wolf and Kramer.

H. W. NOTT, in rebuttal, being recalled, testified in substance as follows:

Mr. Hefley did not have any conversation with me about reduced rates or getting reduced rates. He never paid me $1.00 for this company or any amount to have car held. My rate at that time was 84 cts. at time of arrival of his goods.

The parties having failed to agree on a statement of facts, I adopt and approve the foregoing statement as a full, true, and correct statement of all the facts from the evidence introduced on the trial of the above entitled and numbered cause, and order the same filed as part of the records hereof.

Approved this the 27th day of April, A. D. 1891.

E. Y. TERRAL,
Co. Judge, Milam Co., Tex.

14 Indorsement on statement of facts: 590. Hefley & Lewis *vs.* G., C. & S. F. R'y Co. Statement of facts. Filed April 27th, 1891. W. M. Gill, Co. clerk.

Defendant's Bills of Exception to the Court's Conclusion of Law and Fact.

In the County Court of Milam County, Texas.

HEFLEY and LEWIS
vs.
GULF, COLORADO AND SANTA FÉ R'Y Co. } 590.

Be it remembered that on the 14th day of April, A. D. 1891, the above numbered and entitled cause was called for trial, and the court having overruled defendant's exceptions to plaintiffs' pleadings, and both parties thereafter having announced ready for trial, and the matters of fact as well as of law having been submitted to the court, who, after having fully heard the same, rendered judgment in favor of plaintiffs for $82.80.

Wherefore the defendant requested the court to file its conclusions of law and fact, which conclusion of law and fact was accordingly

filed by said court on April 16th, 1891, to which the defendant then and there excepted, for the following reasons, to wit:

1. Because the court erred in its conclusions of fact in holding that it was encumbent on defendant to deliver said freight to plaintiff- at rate specified in bill of lading instead of the published tariff rate, which was 84 cts. per hundred pounds, this shipment of goods in question being an interstate shipment and there being no evidence that defendant had authorized the bill of lading; that all the evidence tendered to establish the fact that the regular tariff
15 rate, properly published in defendant's office at the date of, prior to, and subsequent to the shipment of said goods, was 84 cts. per hundred pounds.

Def't's Bills of Exceptions Cont.

2. Because the court erred in its conclusions of law in holding that the act of the legislature of Texas under which a recovery was sought and had in this case is -valid and of — effect, for the reason that it is in conflict with that provision of the *conclusion* of the United States which gives to Congress the exclusive power to regulate commerce between the States and Territories, and, Congress having fully exercised its powers, it is to be presumed that it has prescribed all regulations in respect to interstate shipment that it deemed legal.

3. Because the act of the legislature of Texas in question is repugnant to the statutes of the United States enacted in pursuance of the powers of Congress to regulate commerce among the States, in this: that the Texas statute requires a railway company to deliver freight on payment of the rate of freight stated in the bill of lading, while the act of Congress requires delivery only on payment of the regular tariff rate then in effect, regardless of the rate in the bill of lading.

4. Because the act of the legislature under which recovery was sought and had is repugnant to the laws and Constitution of the United States, in this: that it requires delivery of an enterstate shipment by an interstate carrier of goods on certain conditions under a heavy penalty, when such conditions are not found in and such penalty prescribed by the United States law commonly known as the interstate commerce act, and such requirements and penalties being omitted from said act of Congress and in all of the subsequent amendments thereof, it must necessarily be presumed that Congress did not intend that the statutes of particular States should have application, but that the entire body of interstate commerce should be control-ed only by the rules enacted by Congress.

And now comes the defendant and renders this its above and foregoing bill of exceptions to the court's conclusions of law and facts, and prays that the same be signed and filed as a part of the record in this cause.

Examined, approved, and signed by me, and ordered to be filed

as a part of the record in this cause, this 20th day of April, A. D. 1891.

E. Y. TERRAL,
County Judge, Milam County.

16 Indorsement on back of bill of exceptions to court's conclusion of law and fact: 590. Hefley & Lewis *vs.* Gulf, Colorado and Santa Fé R'y Co. Defendant's bills of exception to the court's conclusion of law and fact. Filed this 20th day of April, A. D. 1891. W. M. Gill, clerk Co. court, Milam Co., Tex., by Frank Clement, deputy.

Defendant's Bills of Exceptions to the Court Overruling Def't's Demurrers.

In the County Court of Milam County, Texas.

HEFLEY AND LEWIS
vs
GULF, COLORADO AND SANTA FÉ R'Y CO. } No. 590.

Be it remembered that on the 14th day of April, A. D. 1891, the above entitled and numbered cause was called for trial, and the defendant, The Gulf, Colorado & Santa Fé R'y Co., by att'y, in open court presented and read to the court the following exceptions to plaintiffs' pleadings, which exceptions were embodied in defendant's first amended original answer, and which are as follows, to wit:

Now comes the defendant and, excepting to the plaintiffs' amended pleadings from justice'- court, says that the same are insufficient in law, and of this he prays judgment of the court.

2nd. For special exceptions the defendant says that the act of the legislature of Texas under which a recovery is sought is invalid and of no effect, for the reason that it is in conflict with that provision of the Constitution of the United States which gives to Congress the exclusive power to regulate commerce between the States and Territories, and, Congress having fully exercised its power, it is presumed that it has prescribed all regulations in respect to interstate shipment that it deemed legal.

3rd. For further special exception defendant says that
17 plaintiffs' pleading shows no cause of action, because the act of the legislature of Texas in question is repugnant to the statutes of the United States enacted in pursuance of the power of Congress to regulate commerce among the States, in this: that the Texas statute requires a railroad company to deliver freight on payment of the rate of freight stated in the bill of lading, while the act of Congress requires delivery only *in* payment of the regular tariff rate th*ere* in effect, regardless of the rate named in the bill of lading.

4th. For further special exception defendant says that said act of the legislature is repugnant to the laws and Constitution of the United States, in this: that it requires delivery of an interstate shipment by an interstate carrier of goods on certain conditions under penalty, when such conditions are not found in and such

penalty not prescribed by the United States law commonly known as the interstate commerce act, and such requirements and penalties being omitted from said act of Congress and in all the subsequent amendments thereof, it must necessarily be presumed that Congress did not intend that the statutes of particular States should have application, but that the entire body of interstate commerce should be control-ed only by the rules enacted by Congress.

All of which above and foregoing exceptions were overruled by the court; to which decission and order of the court overruling said exceptions the defendant then and there excepted and tenders this bill of exceptions and asks that the same be signed and filed as a part of the record in this cause.

Examined, approved, and signed by me and ordered to be filed as a part of the record in this cause this 20th day of April, A. D. 1891.

E. Y. TERRAL,
County Judge of Milam County.

Indorsement and conclusion to def't's bills of exceptions to overruling demurrers: No. 590. Hefley & Lewis *vs.* Gulf, Colorado and Santa Fé R'y Company. Defendant's bills of exceptions to the court overrulin- defendant's demurrers. Filed this 20th day of Apr'l, A. D. 1891. W. M. Gill, Co. clerk, Milam Co., Tex., by Frank Clement, d'p'ty.

18 *Bill of Cost.*

HEFLEY AND LEWIS
vs.
GULF, COLORADO & SANTA FÉ R'Y CO. } No. 590. Bill of Costs.

Clerk's cost.

Docketing cause	10
Filing 17 papers	85
Entering 1 appearance	10
" 3 continuances	30
4 orders and judgments	2 00
Swearing 5 witnesses	50
Issuing 3 subpœnas for 8 witnesses	1 25
Assessing damages	50
Docketing 2 motions	20
Final judgment	50
Taxing cost and copy	25
Issuing 1 execution	50
Entering sheriff's return on ex.	50
Total	$7 55
By cash	$7 55
	$7 55 $7 55

Sheriff's cost.

Summoning 8 wit.	4 00
Jury fee	50
Total	$4 50

Sheriff's cost paid by def't to Bickett, sh'ff.

Witness' attendance, F. A. Barker, 1 day $1 00

Paid by def't.

Co. judge's fee $3 00

Paid by def't.

Justice'- court cost $6 40

Paid by def't.

Making transcript to court of appeals, $12.50.

Costs of levying execution, adv. property for sale, mil-age on same, com. on sale, bill of sale, and return — execution by Cunstable W. W. Chambers, $10.90, and paid by defendant.

Recapitulated.

Clerk's cost	$20 05
Sheriff's cost	4 50
Constable's cost	10 90
Judge's coat	3 00
Justice's cost	6 40
Witness' fee	1 00
Total amount of costs and carried to next page	$45 85

19 *Bill of Cost Concluded.*

To amount brought forward	$45 85
By cash paid by defendant in this cause	33 35
To balance due and for transcript in this cause to clerk	$12 50

Clerk's Certificate.

THE STATE OF TEXAS, }
County of Milam. }

I, W. M. Gill, clerk of the county court in and for the county of Milam and State of Texas, do hereby certify that the within and foregoing transcript is a true, correct, and complete copy of all the proceedings had in the foregoing numbered and styled cause, containing 20 pages, including a correct statement of the bill of costs and the credits therein and by whom paid, as the same appears on file now in my office in the papers in said cause, and of the judgment rendered in the county court of said county, in the Civil Minutes of said court, in vol. 3, pages 49 & 50, and of the bill of costs, as appears in Civil Fee Book, vol. 2, page 177, records of Milam Co., Texas.

Given under my hand and seal of office, at office, in Cameron, Texas, on this the 29th day of May, A. D. 1891.

[Seal County Court of Milam County, Texas.]

W. M. GILL,
Clerk County Court, Milam County, Texas.

20 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judge of the county court of the county of Milam, State of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said county court, before you, being the highest court of law or equity of the said State in which a decission could be had in the said suit between Hefley & Lewis, a

firm composed of J. D. Hefley and A. J. Lewis, plaintiffs, and The Gulf, Colorado & Santa Fé Railway Company, defendant, wherein was drawn in question the validity of a treaty or statute of or authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 9th day of July, in the year of our
21 Lord one thousand eight hundred and ninety-one.

Writ of error concluded.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
DAVID J. BREWER,
Associate Justice Supreme Court U. S.

Indorsement on back of writ of error: No. 590. Hefley & Lewis *vs.* G., C. & S. Fé R'y Co. Writ of error. Filed July 15th, 1891. W. M. Gill, Co. clerk, Milam Co., Texas.

22 *Supersedeas Bond.*

In the County Court of Milam County, State of Texas.

HEFFLEY & LEWIS
vs.
GULF, COLO. & SANTA FÉ R'Y CO. } No. 590.

Know all men by these presents that we, the Gulf, Colorado and Santa Fé Railway Company, as principal, and J. H. Hutchings and

Robert Clark, as sureties, of Galveston county, Texas, are firmly bound unto J. D. Heffley and A. J. Lewis, composing the commercial partnership of Heffley & Lewis, and their and each of their successors and legal representatives, in the just and full sum of two thousand ($2,000.00) dollars; for the payment of which, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, heirs, executors, administrators, and legal representatives, firmly by these presents.

Whereas the Gulf, Colorado and Santa Fé Railway Company have prosecuted a writ of error, with supersedeas, to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the county court of Milam county, State of Texas, on the 14th day of April, 1891, in favor of the said Heffley and Lewis and against the said Gulf, Colorado and Santa Fé Railway Company, in the sum of ($82.80) eighty-two and $\frac{80}{100}$ dollars, with interest, and all costs of suit:

Now, therefore, the condition of this obligation is such that if the above-named Gulf, Colorado and Santa Fé Railway Company shall prosecute its said writ of error to effect and answer to all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Witness our hands this 8th day of May, 1891.

THE GULF, COLORADO AND SANTA FÉ RAILWAY COMPANY,
By J. W. TERRY, *Sol. for Texas.*
J. H. HUTCHINGS.
ROBERT CLARK.

Attest: JOHN M. BIRD, *Secretary.*

23 *Supersedeas Bond Concluded.*

STATE OF TEXAS, }
County of Galveston. }

J. H. Hutchins and Robert Clark, being sureties in the foregoing bond, being first duly sworn, each for himself doth say that he is worth the sum of four thousand dollars and owns property of greater value situated in the State of Texas, subject to execution, over and above all of his just debts, liabilities, and exemptions.

J. H. HUTCHINGS.
ROB'T CLARK.

Subscribed and sworn to by the said J. H. Hutchings and Robert Clark, before me, a notary public in and for Galveston county, State of Texas, this 8th day of May, 1891.

Witness my hand and seal of office.

FOSTER ROVE,
Notary Public in and for Galveston County, Texas.

Approved, but not to operate as a supersedeas, July 9, 1891.

DAVID J. BREWER,
Associate Justice Supreme Court U. S.

Indorsement on back of supersedeas bond: No. 590. Heffley & Lewis *vs.* Gulf, Colo. & Santa Fé R'y Co. In the county court of Milam county, State of Texas. Supersedeas bond. Filed July 15th, 1891. W. M. Gill, Co. clerk Milam Co., Texas.

24 *Assignment of Error.*

County Court, Milam County, Texas.

HEFLEY & LEWIS
vs.
GULF, COL. AND SANTA FÉ RAILWAY CO. } No. 590.

On error to the Supreme Court of the United States.

Now comes The Gulf, Colorado and Santa Fé Railway Company, defendant in the original suit and plaintiff in the writ of error sued out to the Supreme Court of the United States, and assigns the following errors committed by the said county court of Milam county, State of Texas, upon which it will rely for the reversal of the judgment herein:

I. The said county court erred in overruling the defendant's general demurrer and exceptions to the plaintiffs' pleadings.

II. The said county court erred in overruling the defendant's special exception to the plaintiffs' pleadings No. 2, as follows:

2nd. For special exception the defendant says that the act of the legislature of the State of Texas under which a recovery is sought is invalid and of no effect, for the reason that it is in conflict with that provision of the Constitution of the United States which gives to Congress the exclusive power to regulate commerce between the States and Territories, and, Congress having fully exercised its power, it is to be presumed that it has prescribed all regulations in respect to interstate shipments that it deemed legal.

III. The said county court erred in overruling defendant's special exception No. 3, as follows: "For further special exception defendant says that the plaintiffs' pleadings show no cause of action, because the act of the legislature of Texas in question is repugnant to the statutes of the United States enacted in pursuance of the power of Congress to regulate commerce among the States, in this: that the Texas statutes require a railway company to deliver freight on payment of the rate of freight stated in the bill of lading, while the act of Congress requires delivery only on payment of the regular tariff rate then in effect, reguardless of the rate named in the bill of lading."

IV. The said county court erred in overruling defendant's
25 special exception No. 4, as follows:

Assignment of Error Continued.

"4th. For further special exception defendant says that the said act of the legislature is repugnant to the laws and Constitution of the United States, in this: that it requires delivery of an interstate

shipment by an interstate carrier of goods on certain conditions, which are not found in and such penalty not prescribed by the United States law commonly known as the interstate commerce act, and such requirements and penalties being omitted from said act of Congress and in all of the subsequent amendments thereof, it must necessarily be presumed that Congress did not intend that the statutes of any particular State should have application, but that the entire body of interstate commerce should be controlled only by the rules enacted by Congress."

V. The said county court erred in its conclusion of the law as follows:

"1st. The law of Texas is that the plaintiffs are entitled to recover of defendants the sum of $82.80, the amount of freight due by the bill of lading, as a penalty for the one day during which the defendant, its agent, officers, and employés, refused to receive that amount from plaintiffs as the correct freight due by the bill of lading to defendant and to deliver to plaintiffs their merchandise after the plaintiff- had tendered said amount to the defendant and demanded said merchandise."

VI. The court erred in rendering judgment for the plaintiff-, because it appears from the evidence that on the arrival of the shipment and presentation of the bill of lading the bill of lading showed a different rate from the then published tariff rates in possession of the railroad agent, whereas the laws of the United States, namely, an act entitled An act to regulate commerce, and the subsequent amendment- *amendments* thereto, require delivery only on payment of the rate specified in the published tariffs filed with the Interstate Commerce Commission, and made it a criminal offence for the railroad agent to do otherwise. Under these circumstances the railroad agent was entitled to a reasonable time to enquire into the rate named in bill of lading and ascertain whether there had been any change in the published tariffs of which he had not been advised which would authorize such rate. It appears that he exercised due dil*l*igence in ascertaining the facts, and delivered the property as soon as the facts were ascertained. During the exercise
26 of the above right by the agent, which right is necessarily implied by the legisla*t*ure of Congress, the State of Texas had no right to impose a penalty upon the railroad company as a condition to the exercise of the right.

Assignment of Error Continued.

VII. The court erred in its conclusion of fact in holding that it was encumbent on defendant to deliver said freight to plaintiffs at a rate specified in the bill of lading instead of the published tar*r*iff rate, which was 84 cents per hundred pounds, this shipment of goods in question being an interstate shi*l*ment, and there being no evidence that defendant had authorized the bill of lading; that all the evidence tende*r*ed to establish the fact that the regular tar*r*iff rate, properly published in defendant's office at the date of, prior to, and subsequent to the shipment of said goods, was 84 cents per hundred pounds.

VIII. The court erred in its conclusions of law in holding that the act of the legislature of Texas under which a recovery was sought and had in this case is valid and of effect, for the reason — that provision of the Constitution of the United States which gives to Congress the exclusive power to regulate commerce between the States and Territories, and, Congress having fully exercised its powers, it is to be presumed that it has prescribed all regulations in respect to interstate shipments that it deemed legal.

IX. Because the act of the legislature of Texas in question is repugnant to the statutes of the United States enacted in pursuance of the powers of Congress to regulate commerce among the States, in this: that the statute requires a railway company to deliver freight on payment of the rate of freight stated in the bill of lading, while the act of Congress requires delivery only on payment of the tariff rate then in effect, regardless of the rate in the bill of lading.

X. Because the act of the legislature under which recovery was sought and had is repugnant to the laws and Constitution of the United States, in this: that it requires delivery of an interstate shipment by an interstate carrier of goods on certain conditions, under a heavy penalty, when such conditions are not found in and such penalty prescribed by the United States law commonly known as the interstate commerce act, and, such requirements and penalties being omitted from said act of Congress and in all the
27 subsequent amendments thereof, it must necessarily be presumed that Congress did not intend that the statutes of particular States should have application, but that the entire body of interstate commerce should be controlled only by the rules enacted by Congress.

Assignment of error concluded.

BRITTON & GRAY & J. W. TERRY,
Attorneys for Plaintiff in Error.

Indorsement on back of assignment of error: No. 590. Milam county court. On error to Supreme Court of United States. Hefley & Lewis *vs.* G., C. & S. F. R'y Co. Assignment of error. Filed July 15th, 1891. W. M. Gill, Co. clerk, Milam Co., Texas.

28 *Additional Cost Bill.*

Additional costs to transcript.

Filing 4 papers	20
Making copies of additional record	6 50
Amount brought forward	12 50
Balance due	$19 20

Clerk's Certificate.

THE STATE OF TEXAS, }
County of Milam. }

I, W. M. Gill, county clerk in and for Milam county, Texas, do hereby certify that the foregoing eight pages, numbered from 20 to 27, inclusive, contain true and correct copies of the writ of error, writ of error bond, and assignment of errors, additional to papers filed in my office on the 15th day of July, A. D. 1891, as the same appears of record in my office.

Given under my hand and seal of office on this the 17th day of July, A. D. 1891.

[Seal County Court of Milam County, Texas.]

W. M. GILL,
Co. Clerk, Milam Co., Texas.

29 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Hefley & Lewis, a firm composed of J. D. Hefley and A. J. Lewis, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the county court of the county of Milam, State of Texas, wherein The Gulf, Colorado & Santa Fé Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this 9th day of July, in the year of our Lord one thousand eight hundred and ninety-one.

(Signed) DAVID J. BREWER,
Associate Justice, Supreme Court U. S.

30 On this 18th day of July, in the year of our Lord one thousand eight hundred and ninety-one, personally appeared J. M. Ralston before me, the subscriber, a notary public in and for Milam county, Texas, and makes oath that he delivered a true copy of the within citation to J. D. Hefley, a member of the firm of Hefley and Lewis, a firm composed of J. D. Hefley and A. J. Lewis.

J. M. RALSTON.

Sworn to and subscribed the 18th day of July, A. D. 1891.

[Seal Notary Public, County of Milam, Texas.]

J. K. FREEMAN,
Notary Public, M. Co., Tex.

[Endorsed:] No. 590. The Gulf, Colorado & Santa Fé Railway Company, appellant, *vs.* Hefley and Lewis, appellees. From the county court of Milam county, Texas. Applied for by E. B. Muse, attorney for plaintiff in error, on July 15th, 1891. The writ of error, supersedeas bond, and assignment of errors were filed in my office on the 15th day of July, 1891, and this transcript is delivered to E. B. Muse, attorney for plaintiff in error, on July 17th, 1891. W. M. Gill, clerk of the county court, Milam county, Texas.

Endorsed on cover: Texas, Milam county court. No. 1310. The Gulf, Colorado & Santa Fé Railway Company, plaintiff in error, *vs.* Hefley & Lewis, a firm composed of J. D. Hefley and A. J. Lewis. Filed July 29, 1891.

Supreme Court of the [illegible]

October Term, 1891.

NOV 9 1891

JAMES H. MCKENNEY,

GULF, COLORADO & SANTA FE RAILWAY CO.

Plaintiff in Error,

vs.

J. D. HEFLEY and A. J. LEWIS.

No. 1316.

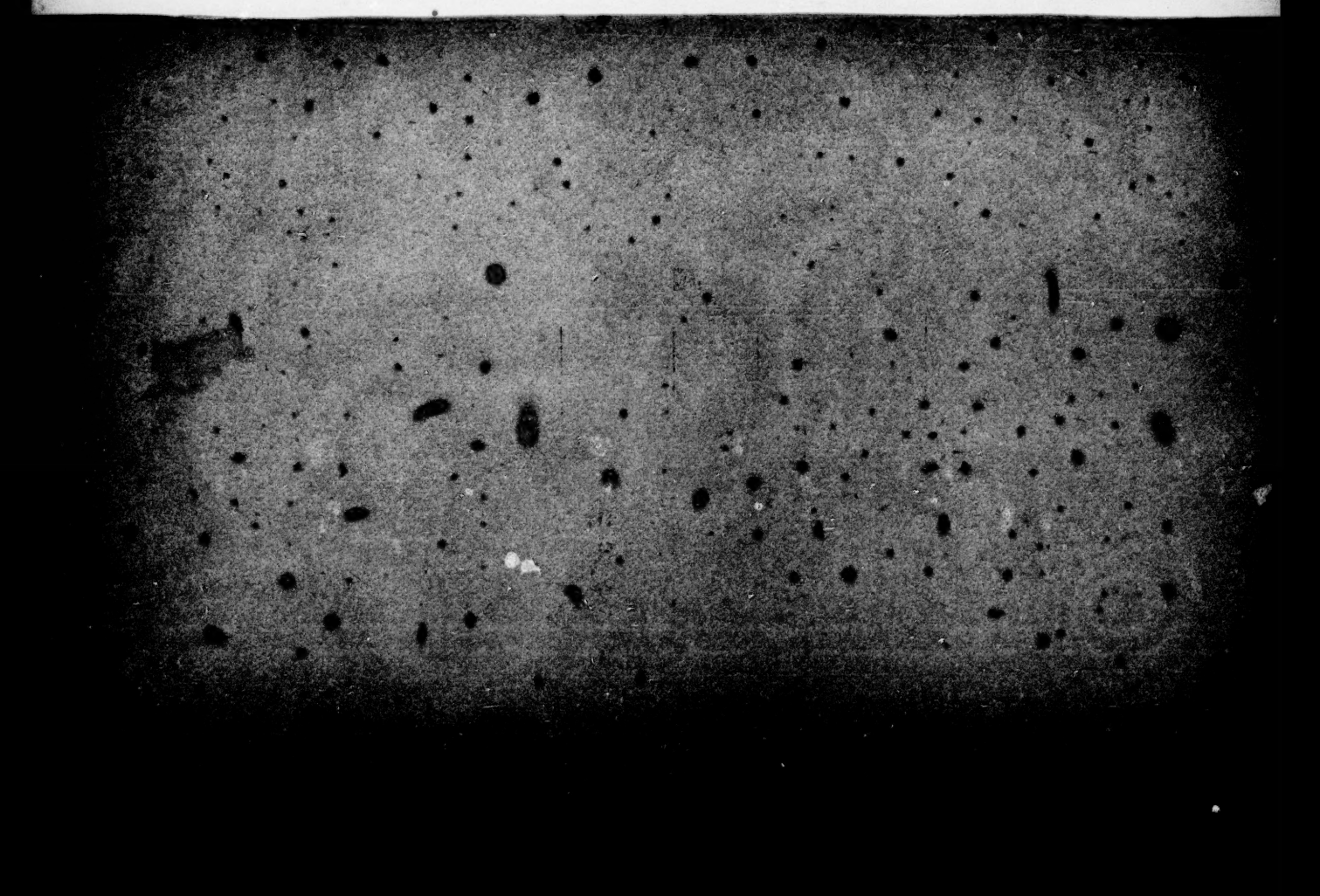
In Error to the County Court of Milam County, Texas.

MOTION TO ADVANCE.

GEO. R. PECK,
J. W. TERRY,
of Counsel.

A. T. BRITTON,
A. B. BROWNE,
Attys. for Plaintiff in Error.

WASHINGTON, D. C.
Gibson Bros., Printers and Bookbinders.
1891.



THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

GULF, COLORADO AND SANTA FÉ RY. CO.,
PLAINTIFF IN ERROR,
v.
J. D. HEFLEY AND A. J. LEWIS.

No. 1310.

In Error to the County Court of Milam County, Texas.

MOTION TO ADVANCE.

Now comes the plaintiff in error, by its counsel, and respectfully moves this honorable Court that the above-entitled cause be advanced and assigned for argument at the present term, upon such date as may be ordered after the first day of March next.

A. T. BRITTON,
A. B. BROWNE,
Atty's for Plaintiff in Error.

GEO. R. PECK,
J. W. TERRY,
of Counsel.

STATEMENT.

From the standpoint of plaintiff in error the case at bar presents plain conflict between the Act of Congress approved Febuary 4, 1887 (24 Stats. p. 379), entitled "An Act to regulate commerce," and the Act amendatory thereof, approved March 2, 1889 (25 Stats. p. 855), and the provisions of a certain Act of the Legislature of the State of Texas printed in full in the appendix hereto.

By section six of the Federal Acts, *supra*, regulating interstate commerce, every common carrier is required to print and publicly post at each station upon its route the schedules of rates and fares for carriage of passengers and property thereon, for the inspection and information of the public. No advance in such rates or fares can be made except upon previous public notice of ten days' duration, nor reduction therein except upon like public notice of three days' duration. The section further provides:

"And when any such common carrier shall have es-
" tablished and published its rates, fares, and charges in
" compliance with the provisions of this section, it shall
" be unlawful for such common carrier to charge, demand,
" collect, or receive from any person or persons a greater
" or less compensation for the transportation of passen-
" gers or property, or for any services in connection there-
" with, than is specified in such published schedule of
" rates, fares, and charges as may at the time be in force."

By section ten of said Act severe penalty by both fine and imprisonment is imposed for violation of the law in this respect.

By the statute of the State of Texas here in question, the freight charges "as shown by the bill of lading" is made conclusive, and upon refusal of the carrier to deliver the goods, wares, or merchandise upon payment or tender of the freight charges as thus shown by the bill of lading,

" the said railroad company shall be liable in damages to
" the owner of said freight, goods, wares, or merchandise,
" to an amount equal to the amount of the freight charges
" for every day said freight, goods, wares, and merchandise
" is held after payment, or tender of payment, of the
" charges due, as shown by the bill of lading, to be re-
" covered in any court of competent jurisdiction."

The case at bar involved an interstate shipment. Suit was brought by defendants in error to recover under this statute of the State. The testimony showed that the rate of freight as charged upon the bill of lading differed from the published interstate tariff rate, and the agent of plaintiff in error, at the point of destination, withheld delivery of the goods to the consignee until by telegraphic communication with proper headquarters he could ascertain the correct amount to be charged, and thus avoid violation of the Federal Interstate Commerce Act.

Notwithstanding this evidence and the plea of justification thereunder, based upon the provisions of the Federal Interstate Commerce Act, *supra*, the court below held the stated act of the State Legislature applicable and controlling, and rendered judgment accordingly.

The question thus sharply presented is, whether, upon an interstate shipment, the carrier is bound to observe the Interstate Commerce Act of Congress, making the published tariff rate then in force alone controlling (irrespective of the rate and charges stated upon the bill of lading), or the stated act of the State Legislature making the rate and charges appearing upon the bill of lading conclusive, and imposing heavy penalty for failure to deliver the goods upon payment or tender of the amount thereof. The Federal law ignores the bill of lading and makes the published tariff rate conclusive, imposing heavy penalty for any variance therefrom. The statute of the State ignores the published interstate tariff of rates and makes the rate

and sum "specified in the bills of lading" conclusive, imposing heavy damages upon the carrier, at the suit of the owner, for violation of the statute.

The plaintiff in error, as a common carrier of interstate traffic, is constantly subjected to suits of this nature within the State of Texas. The Supreme Court of that State has upheld the State statute. This plaintiff in error cannot yield obedience to the Federal law without constant violation of the State Act, and constant subjection to suit thereunder (as in the case at bar). It cannot yield obedience at all times to the State Act without plainly violating the prohibition, and incurring the penalty of the Federal Interstate Commerce Law. Other common carriers within said State are similarly circumstanced. The Legislature of Arkansas has enacted a similar statute, and the question here presented is understood to be now before the highest court of that State for decision. Common carriers by rail in each State are harassed by constant litigation thereunder. The decision of this Court can alone afford relief and determine by what law—Federal or State—this plaintiff in error, and all common carriers similarly circumstanced, shall be controlled in cases of interstate traffic similar to that presented by the record in the case at bar.

Wherefore it is respectfully prayed that the motion to advance may be granted, and the cause set down for argument at a day within the convenience of this honorable Court after the first day of March next.

A. T. BRITTON,
A. B. BROWNE,
Attys. for Plaintiff in Error.

GEORGE R. PECK,
J. W. TERRY,
of Counsel.

APPENDIX.

17th Legislature, Special Session, p. 35.

CHAPTER XXVI.

AN ACT to prohibit railroad companies, their officers, agents and employés, from making excessive charges for carrying and transporting freight, goods, wares, and merchandise, and to require said companies, their officers, agents and employés, to deliver freight, goods, wares, and merchandise on the payment of the freight charges due as shown by the bill of lading, and to provide penalties for the violation of this act.

SECTION. 1. *Be it enacted by the Legislature of the State of Texas*, That it shall be unlawful for any railroad company in this State, its officers, agents or employés, to charge and collect, or to endeavor to charge and collect, from the owner, agent, or consignee of any freight, goods, wares, and merchandise, of any kind or character whatever, a greater sum for transporting said freight, goods, wares, and merchandise than is specified in the bills of lading.

SEC. 2. That any railroad company, its officers, agents or employés, having possession of any goods, wares, and merchandise of any kind or character whatever, shall deliver the same to the owner, his agent, or consignee, upon payment of the freight charges as shown by the bill of lading.

SEC. 3. That any railroad company, its officers, agents, or employés, that shall refuse to deliver to the owner, agent, or consignee any freight, goods, wares, and merchandise of any kind or character whatever, upon the payment, or tender of payment, of the freight charges due as shown by the bill of lading, the said railroad company shall be liable in damages to the owner of said freight, goods, wares, or merchandise, to an amount equal to the amount of the freight charges for every day said freight, goods, wares, and merchandise is held after payment, or tender of payment, of the charges due as shown by the bill of lading, to be recovered in any court of competent jurisdiction.

Approved May 6, A. D. 1882.

Takes effect ninety day after adjournment.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1894.

GULF, COLORADO & SANTA FE RAILWAY CO.,

PLAINTIFF IN ERROR,

vs.

J. D. HEFLEY AND A. J. LEWIS.

No. 255.

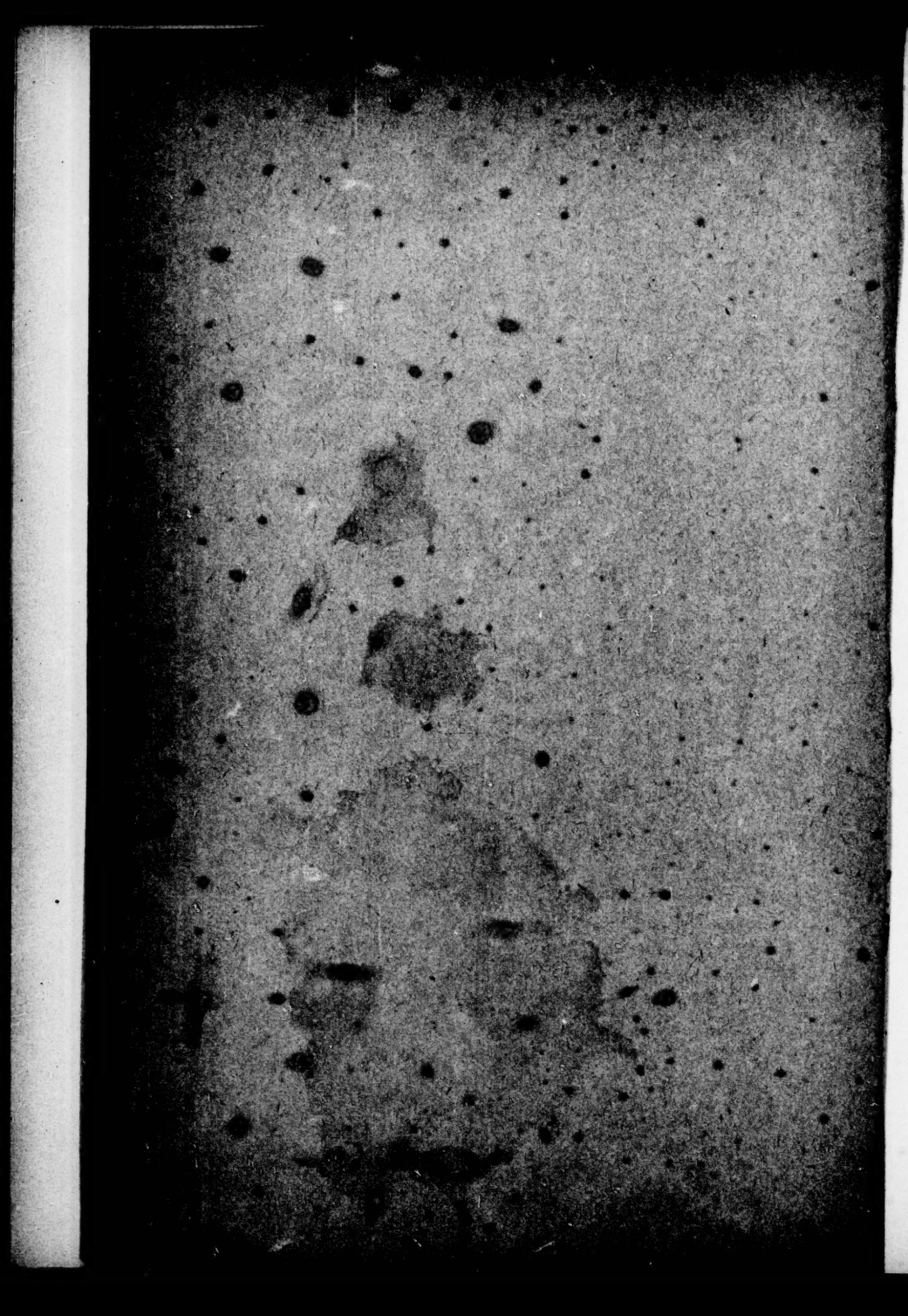
In Error to the County Court of Milam County, Texas.

BRIEF FOR PLAINTIFF IN ERROR.

A. T. BRITTON,
A. H. BROWNE,
J. W. TERRY,
Attys for Plaintiff in Error.

GEO. R. PECK,
General Solicitor.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1895.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

GULF, COLORADO & SANTA FÉ RAILWAY CO.,
PLAINTIFF IN ERROR,
v.
J. D. HEFLEY AND A. J. LEWIS.

No. 255.

In Error to the County Court of Milam County, Texas.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

An Act of the Legislature of Texas, approved May 6, 1882 (Appendix), makes the rate of charge named in a railroad bill of lading conclusive; requires the railroad company to deliver the property transported thereunder upon payment of the charges shown thereby, and imposes penalty for every day such property is withheld by the carrier "to an amount equal to the amount of the freight "charges, after payment or tender of payment of such "charges due, as shown by the bill of lading."

Thereunder, and without alleging any *actual* damage, defendants in error brought suit in the County Court of Milam County to recover for one day's delay in failing to deliver a car-load of furniture shipped to them from St. Louis, Missouri. The Railroad Company plead that the State act under which recovery was sought was unconstitutional and in conflict with the Federal Interstate Commerce law. Its plea was overruled and judgment rendered against it for $82.80 and costs. That sum being below the jurisdictional amount ($100) requisite to carry the case to the Supreme Court of that State, this writ of error, direct from the trial Court, was properly allowed, being from "A final judgment * * * "in the highest Court of the State in which a decision in "the suit could be had." * * * (U. S. R. S., Sec. 709.)

The complaint (Rec. 1) avers that plaintiff in error is a corporation of the State of Texas, "running a line of rail-"way for transportation of freight and persons as a com-"mon carrier from Cameron, thence north to its connec-"tion with the St. Louis and San Francisco Railway "Company, and on, with said last-named common carrier, "to St. Louis, in the State of Missouri." That plaintiffs purchased a car-load of furniture from the Wolf-Kramer Furniture Company, which company, as agent for plaintiffs, delivered to the St. Louis and San Francisco Railway Company at St. Louis, to be carried by that railway company to its connection with the line of the plaintiff in error, and there delivered to the plaintiff in error, to be carried to Cameron, Texas, and delivered to defendant in error at the rate of sixty-nine cents per one hundred pounds for the entire carriage; that the aggregate freight charges due thereon were $82.80, as specified by the bill of lading issued to the plaintiffs as consignees; that said goods arrived at Cameron, Texas, about August 11, 1890, when the

railroad company's agent demanded from plaintiffs the sum of $100.80 as freight charges, which was at the rate of 84 cents per one hundred pounds, and which plaintiffs refused to pay. That the railway company's agent held the goods for one day, when he accepted the rate named in the bill of lading and delivered the goods.

The answer of the railway company (Rec. 2) specially plead—

1. That the Act of the State legislature, *supra*, is invalid and of no effect because in conflict with the provision of the Federal Constitution giving Congress the exclusive power to regulate commerce between the States and Territories, and "Congress having fully exercised its power "it is to be presumed that it has prescribed all regulations "in respect to interstate shipments that it deemed legal."

2. That the State act, *supra*, was also repugnant to the Federal Interstate Commerce Law "in this, that the "Texas statute requires a railway company to deliver "freight on payment of the rate of freight stated in the "bill of lading, while the Act of Congress requires deliv-"ery only on payment of the regular tariff rate then in "effect, regardless of the rate named in the bill of lading."

3. That the State statute is invalid in imposing penalties not prescribed by the Interstate Commerce Act.

4. That the State statute is inapplicable to such interstate shipments, "because the Congress of the United "States alone has power to regulate commerce between "the States, and having regulated the same to a great ex-"tent such regulations should be to the exclusion of all "State regulations."

These pleas were overruled by the trial court, and jury being waived (R. 4), findings of fact and conclusions of law were entered, together with judgment against plaintiff in error for $82.80. Exceptions were duly taken (Rec.

11–14) to the rulings and judgment, which, with the assignments of errors here (Rec. 18–20), raised the same grounds orginally urged in the trial court.

The statement of facts (Rec. 6–11) recite all the testimony given in the cause.

The facts of the interstate shipment, at the rate as shown by the bill of lading thereunder,—sixty-nine cents,—tender of that amount to the company's agent, and his refusal to receive the same and deliver the goods, are not disputed. Such agent, however, states (Rec. 10), "I refused "the amount of $82.80 as being insufficient, for the reason "that my tariff rate for this shipment was eighty-four cents "per hundred pounds, which amounted to $100.80 for said "shipment;" that he telegraphed at once to the general freight agent, but, because the wires were working badly, did not receive reply until next day, when, pursuant to instructions received from such general freight agent advising that the rate of sixty-nine cents per one hundred pounds was correct, he then delivered the goods to the consignees and received the freight charges therefor at the rate named in the bill of lading.

The agent further testified that he received the regular printed tariff on the 13th or 14th of August, about a day after the car was delivered to the plaintiffs, and adds: "My "instructions were to protect only properly published "tariff rates, regardless of rates specified in bills of lad-"ing."

ASSIGNMENTS OF ERROR.

These appear at large in the Record (pp. 18–20), and their substance is recited *supra*.

ARGUMENT.

It should be noticed that the shipment was not only interstate, but that the goods reached the line of plaintiff in

errror from the connecting carrier. Reduction in the rate had not been noticed to plaintiff in error's agent at Cameron, Texas, but it appears by the testimony of defendant in error Hefley (Rec. 11) that he had received instant information of the reduction in rate and paid the initial carrier at St. Louis one dollar "to hold the car for me one "day in St. Louis to get that rate."

From the standpoint of plaintiff in error the case at bar presents plain conflict between the Act of Congress approved February 4, 1887 (24 Stats., p. 379), entitled "An "Act to regulate commerce," and the Act amendatory thereof, approved March 2, 1889 (25 Stats., p. 855), and the provisions of a certain Act of the Legislature of the State of Texas printed in full in the appendix hereto.

By section six of the Federal Acts, *supra*, regulating interstate commerce, every common carrier is required to print and publicly post at each station upon its route the schedules of rates and fares for carriage of passengers and property thereon, for the inspection and information of the public. No advance in such rates or fares can be made except upon previous public notice of ten days' duration, nor reduction therein except upon like public notice of three days' duration. The section further provides:

"And when any such common carrier shall have es-
" tablished and published its rates, fares, and charges in
" compliance with the provisions of this section, it shall
" be unlawful for such common carrier to charge, demand,
" collect, or receive from any person or persons a greater
" or less compensation for the transportation of passen-
" gers or property, or for any services in connection there-
" with, than is specified in such published schedule of
" rates, fares, and charges as may at the time be in force."

By section ten of said Act severe penalty by both fine

and imprisonment is imposed for violation of the law in this respect.

By the statute of the State of Texas here in question, the freight charges, "as shown by the bill of lading," is made conclusive, and upon refusal of the carrier to deliver the goods, wares, or merchandise upon payment or tender of the freight charges as thus shown by the bill of lading,

> "the said railroad company shall be liable in damages to
> "the owner of said freight, goods, wares, or merchandise.
> "to an amount equal to the amount of the freight charges
> "for every day said freight, goods, wares, and merchandise
> "is held after payment, or tender of payment, of the
> "charges due, as shown by the bill of lading, to be re-
> "covered in any court of competent jurisdiction."

The question thus sharply presented is, whether, upon an interstate shipment, the carrier is bound to observe the Interstate Commerce Act of Congress, making the published tariff rate then in force alone controlling (irrespective of the rate and charges stated upon the bill of lading), or the stated act of the State Legislature making the rate and charges appearing upon the bill of lading conclusive, and imposing heavy penalty for failure to deliver the goods upon payment or tender of the amount thereof. The Federal law ignores the bill of lading and makes the published tariff rate conclusive, imposing heavy penalty for any variance therefrom. The statute of the State ignores the published interstate tariff of rates and makes the rate and sum "specified in the bill of lading" conclusive, imposing heavy damages upon the carrier, at the suit of the owner, for violation of the statute.

The Constitution, Art. 1, Sec. 8, provides that—

> "The Congress shall have power * * * to regu-

" late commerce with foreign nations and among the " several States, and with the Indian tribes."

This grant of power is exclusive whenever the subject-matter, as here, falls within its plain operation. In *Welton* v. *Missouri* (91 U. S. 275–280) this court held:

" It will not be denied that that portion of commerce " with foreign countries and between the States which " consists in the transportation and exchange of commodi- " ties is of national importance, and admits and requires " uniformity of regulation. The very object of investing " this power in the General Government was to insure this " uniformity against discriminating State legislation."

In *Wabash, &c., Railway Company* v. *Illinois* (118 U. S. 557), a statute of that State which sought to impose upon interstate commerce a regulation of the charges made for such transportation in that State was held to be forbidden by the Federal Constitution, and hence invalid. In the exhaustive opinion rendered therein this Court said (p. 575):

" We must, therefore, hold that it is not, and never has " been, the deliberate intention of a majority of this Court " that the statute of a State which attempts to regulate " the affairs and charges of railroad companies within its " limits, for a transportation which constitutes a part of " commerce among the States, is a valid law."

And, again, page 577:

" As restricted to a transportation which begins and " ends within the limits of the State it may be very just " and equitable, and it certainly is the province of the " State Legislature to determine that question. But when " it is attempted to apply to transportation through an " entire series of States a principle of this kind, and each " one of the States shall attempt to establish its own rates

" of transportation, its own methods to prevent discrimi-
" nation in rates, or to permit it, the deleterious influence
" upon the freedom of commerce among the States and
" upon the transit of goods through those States cannot
" be overestimated. That this species of regulation is
" one which must be, if established at all, of a general
" and national character, and cannot be safely and wisely
" remitted to local rules and local regulations, we think
" is clear from what has already been said. And if it be
" a regulation of commerce, as we think we have demon-
" strated it is, and as the Illinois Court concedes it to be,
" it must be of that national character, and the regulation
" can only appropriately exist by general rules and prin-
" ciples which demand that it should be done by the
" Congress of the United States under the commerce
" clause of the Constitution."

Subsequent decisions of this Court have reaffirmed the same doctrine. *In re Rahrer* (140 U. S. 545–555) this Court said :

" The power of Congress to regulate commerce among
" the several States when the subjects of that power are
" national in their nature is also exclusive. The Consti-
" tution does not provide that interstate commerce shall
" be free, but by the grant of this exclusive power to reg-
" ulate it it was left free except as Congress might im-
" pose restraint."

The point of time when Federal control over interstate commerce ceases and State control begins has been declared by this Court in *Leisy* v. *Hardin* (135 U. S. 100), following *Bowman* v. *Chicago, &c., Railway Company* (118 U. S. 465), to be (p. 124) " when the property in ques-
" tion becomes mingled in the common mass of property
" within the State."

The facts in this record show that the car-load of furniture was held in the custody of the common carrier as

such, and with all consequent liability therefor, until its agent had ascertained upon diligent inquiry that the rate of charge named in the bill of lading presented to him was correct and superseded the higher charge for such shipment as disclosed by the latest published tariff in his possession. Following the doctrine of the cases, *supra*, it is therefore beyond question that this property, until its delivery to the consignees, was the exclusive subject of interstate commerce. The interstate commerce law wholly ignores the rate of charge named in the bill of lading, and makes controlling the published tariff rates. The common carrier's liability for any departure therefrom is made by that law highly penal. Its agent, therefore, had the right to reasonable time and opportunity to obtain correct information with respect to such charge from the general freight headquarters of the road. This record shows that he promptly made such inquiry by telegraph, and after but one day's delay ascertained that the charge shown upon the bill of lading was correct, and thereupon he instantly delivered the property to the consignees. While the property was thus circumstanced—a subject of interstate commerce in every sense—it is manifest that the State law here in question could have no operation upon it, because the State had no power of control over it. The Federal and controlling law made the then published rate in possession of the carrier's agent his necessary and exclusive guide. The fact that such rate had been changed had not then been noticed to him, and instantly upon his receiving that information he delivered the goods.

By section six of the interstate commerce law of February 4, 1887 (24 Stats. 383, *supra*), it is made unlawful "to charge, demand, collect, or receive from any person "or persons a *greater* or *less* compensation for the trans- "portation of passengers or property, or for any service

" in connection therewith, than is specified in such pub-
" lished schedule of rates, fares, and charges, as may at
" the time be in force," and by section ten the act of its agent or employé in doing or permitting to be done, or aiding or abetting "any act, matter, or thing in this act " prescribed or declared to be unlawful, is to be deemed " guilty of a misdemeanor, and shall, upon conviction " thereof in any district court of the United States within " the jurisdiction of which such offence was committed, " be subject to a fine of not to exceed five thousand dol-
" lars for each offence."

With this positive and highly penal law before him, plaintiff-in-error's agent at Cameron was, by law, prohibited from doing the very thing that the State statute here in question compelled him to do. In other words, by the Federal law the published rate or tariff controlled him, and his act in ignoring the same was made by the same law a misdemeanor, and subject to this extreme penalty. Under such conditions he could not be expected to shut his eyes to the consequences of possible wrongdoing on his part, and without proper inquiry in ascertaining the correctness of the charges disclosed by this bill of lading before delivering the property to the consignee. Nor, under such circumstances, can the railway company, as principal, be held justly subject to this State statute. When this property reached its destination, the railway company at that point was represented by and acting in the person of its agent; it had received the property from its connecting carrier, by whom the bill of lading was issued. In such a long interstate shipment, it was quite impossible that every agent at every station on its line should have received instant notice of this reduction in rate. Moreover, this shipment passed over continuous lines or routes operated by more than one com-

mon carrier and was transported under a joint tariff, as such tariff is defined in section six of the Interstate Commerce Act. With respect thereto said section provides:

"Such joint rates, fares, and charges on said continuous "lines so filed as aforesaid" (with the Interstate Commerce "Commission) "shall be made public by such common "carriers when directed by said Commission, in so far as "may, in the judgment of the Commission, be deemed "practicable; and said Commission shall, from time to "time, prescribe the measure of publicity which shall be "given to such rates, fares, and charges, or to such part "of them as it may deem it practicable for such common "carriers to publish, and the places in which they shall "be published; but no common carrier, party to any such "joint tariff, shall be liable for the failure of any other "common carrier, party thereto, to observe and adhere to "the rates, fares, and charges thus made and published."

In other words, while each common carrier is required to print and keep for public inspection at each of its stations its rates of freights and fares for traffic over its lines, "joint" tariffs are not thus required to be published at every station on such "continuous lines or routes oper-"ated by more than one common carrier." Hence, neither plaintiff in error nor its agent at Cameron could be found guilty of negligence or delay in thus posting its joint rates with other carriers at its station at Cameron, or held to be negligent in advising its agent there of the reduction in rate disclosed by this record.

Defendant in error Hefley testified, *supra*, that he took immediate advantage of this reduced rate, and held the shipment in St. Louis for one day in order to secure the benefit thereof. The railway company's agent at Cameron also testified that a day or two after he delivered these

goods to these consignees he received formal notice of the reduction in rate of which such consignees had been previously notified and had enjoyed.

Congress has never made a bill of lading conclusive as is sought to be done by the statute of Texas. Bills for that purpose have been introduced and have been rejected. The original interstate commerce law has since stood without amendment in that regard, and by it the published tariffs, whether of single lines or joints tariffs upon continuous lines operated by more than one common carrier, form the controlling rates. Hence it is obvious that with respect to interstate shipments no State statutes can make such bills of lading conclusive in this regard, and thus override the Federal statute. To concede such power in the States would at once result in that conflict of regulation with respect to interstate commerce which this Court in *Wabash, &c., Railway Company* v. *Illinois* (118 U. S. 557, *supra*) so clearly demonstrates. It is manifest, therefore, that the State act here in question has legitimate and exclusive operation only upon the transportation of goods having its origin and destination wholly within the State. The attempt to apply it to this interstate shipment clearly and certainly renders the statute *pro tanto* invalid and inoperative.

Recognition of the power of the State of Texas to apply this statute to an interstate shipment of property would instantly open wide the door to like legislation elsewhere. The suggestion that such power could be constitutionally exercised would open such inviting field for legislation that the example set by Texas would undoubtedly be promptly followed elsewhere. The result would be to make the interstate commerce law in this important and controlling respect wholly subordinate to State legislation, and result in general abdication on the part of the Federal

Government of that exclusive control over interstate commerce which the grant of constitutional power clearly gives, and which this Court has hitherto upheld with strong hand. The exclusive power of control over interstate commerce, vested under the Constitution, has been exercised by Congress, and its will in that regard is supreme. Having, by the existing law, made the tariffs, both local and joint, controlling in matters of rates and fares, it is manifest that such legislation excludes all idea that the carrier's bill of lading in that regard should in any way be held to affect or control such rates. Assuming that Congress might so legislate, it plainly has not done so. Its existing legislation, because exclusive, covers the whole field. The regulations thereby imposed are not subject to alteration or change through State statutes. When, as here, the subject-matter is wholly interstate commerce in the plainest sense, the State statute can have no application thereto. Least of all can it so apply when it seeks to substitute and make conclusive the bill of lading as against the published tariff rates and charges which Congress has affirmatively and expressly declared shall be controlling, and which it has made it a penal offence to disregard.

Respectfully submitted.

A. T. BRITTON,
A. B. BROWNE,
J. W. TERRY,
Att'ys for Plaintiff in Error.

GEO. R. PECK,
Gen'l Solicitor.

APPENDIX.

17th Legislature, Special Session, p. 35.

CHAPTER XXVI.

AN ACT to prohibit railroad companies, their officers, agents, and employés, from making excessive charges for carrying and transporting freight, goods, wares, and merchandise, and to require said companies, their officers, agents, and employés, to deliver freight, goods, wares, and merchandise on the payment of freight charges due as shown by the bill of lading. and to provide penalties for the violation of this act.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That it shall be unlawful for any railroad company in this State, its officers, agents, or employés, to charge and collect, or to endeavor to charge and collect, from the owner, agent, or consignee of any freight, goods, wares, and merchandise, of any kind or character whatever, a greater sum for transporting said freight, goods, wares, and merchandise than is specified in the bills of lading.

SEC. 2. That any railroad company, its officers, agents, or employés, having possession of any goods, wares, and merchandise of any kind or character whatever, shall deliver the same to the owner, his agent, or consignee, upon payment of the freight charges as shown by the bill of lading.

SEC. 3. That any railroad company, its officers, agents, or employés, that shall refuse to deliver to the owner, agent, or consignee any freight, goods, wares, and merchandise of any kind or character whatever, upon the payment, or tender of payment, of the freight charges due as shown by the bill of lading, the said railroad company shall be liable in damages to the owner of said freight, goods, wares, or merchandise, to an amount equal to the amount of the freight charges for every day said freight, goods, wares, and merchandise is held after payment, or tender of payment, of the charges due as shown by the bill of lading, to be recovered in any court of competent jurisdiction.

Approved May 6, A. D. 1882.

Takes effect ninety days after adjournment.

Office Supreme Court U. S.
FILED.
MAR 25 1893
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 870.

THE GULF, COLORADO AND SANTA FÉ RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

HEFLEY & LEWIS, A FIRM COMPOSED OF J. D. HEFLEY AND A. J. LEWIS, DEFENDANTS IN ERROR.

ERROR TO COUNTY COURT OF MILAM COUNTY, TEXAS.

MOTION TO DISMISS.

Come defendants in error, Hefley & Lewis, by attorney, and for the purposes of this motion only, and move the Court to dismiss the writ of error in this cause sued out for the following reasons, viz:

1st. That at and before the issuance of said writ of error, on July 9, 1891, and the filing of said writ of error in the court below, on July 15, 1891, viz., on the 5th day of May, 1891, defendants in error, who were plaintiffs below, sued out a writ of *fieri facias* on the judgment here complained of and

caused said judgment to be executed fully and the money thereon made out of the property of plaintiff in error to be paid over to them and receipted for by their attorney, W. T. Hefley, Esq., all of which was accomplished under the laws of the State of Texas prior to and by the 16th day of May, 1891, whereby the matters in controversy between the parties become fully and legally and finally settled and adjusted, as more fully appears from a certified copy of the *fieri facias* and the return of the officer thereon who executed the same, hereto attached and asked to be considered and taken as a part of the transcript of the record from the court below, as it should have been when said transcript was made; that at said sale of the property of plaintiff in error said property was purchased by E. B. Muse, Esq., the attorney of plaintiff in error, as the Court will find upon inspection of the transcript of the record of the proceedings in the court below, who, as such attorney purchasing for the client, holds said property in trust for plaintiff in error, whereby said sale was only a formal one, and in fact said plaintiff in error is and has always been the legal or equitable owner, or both, of said property, and said plaintiff in error has through the formality of a sale paid off and fully discharged said judgment. Wherefore defendants in error say that there is not now and was not at the filing of said writ of error in the court below, nor at the issuance thereof on July 9, 1891, any matter in controversy between the parties, and that said writ of error and all the proceedings thereunder are *imaginary*, and this suit is prosecuted in order to obtain and extort from this honorable Court an opinion upon a question of law without presenting for its consideration a *bona fide* case; that it is in its nature experimental; all of which facts were known, at least constructively, to J. W. Terry, Esq., of Galveston, Texas, general solicitor of Texas of plaintiff in error, at and before the issuance or filing of said writ of error in the court below, and his local associate acting under his directions, E. B. Muse, Esq.

Premises considered, defendants in error pray that counsel for plaintiff in error, A. T. Britton, A. B. Browne, and G. R. Peck, of Washington, D. C., or either of them, have notice of this motion served on them, and upon due return of same that this honorable Court consider said motion and dispose of same by dismissal *vel non*, as to the judgment of the Court it may appear proper and just in the cause to both parties; and, as in duty bound, they will ever pray, &c., and for costs of this motion.

Respectfully, E. L. ANTONY,
Counsel for Defendants in Error, Hefley & Lewis, the Firm Composed of J. D. Hefley and A. J. Lewis.

The State of Texas to the sheriff or any constable of Milam county, Greeting:

Whereas at a term of the county court held in and for the county of Milam on the 14th day of April, A. D. 1891, Hefley & Lewis, a firm composed of J. D. Hefley and A. J. Lewis, plaintiffs, by the judgment of said court recovered against The Gulf, Colorado and Santa Fé Railway Company, the defendant, the sum of eighty-two dollars and eighty cents, as also the further sum of twenty-two dollars and forty-five cents for costs in that behalf expended:

Wherefore you are hereby commanded that of the goods and chattels, lands and tenements, subject to execution of the said Gulf, Colorado and Santa Fé Railway Company you cause to be made the sum of eighty-two and $\frac{80}{100}$ dollars, with interest thereon, at the rate of eight per cent. per annum, from the 14th day of April, 1891; also the sum of twenty-two and $\frac{45}{100}$ dollars, costs of suit, together with the further costs of executing this writ.

Herein fail not under penalty of the law and of this writ make due return.

Witness my hand and official seal, at office in
[SEAL.] Cameron, this fifth day of May, 1891.
Attest: W. M. GILL, *Clerk*,
By FRANK CLEMENT, *Deputy*.

STATE OF TEXAS, } ss :
Milam County, }

Judgment, $82.80.

Clerk's Fees.

Issuing writ	
Cop of petition with certificates and seal	
Docketing cause	$0 10
Filing 17 papers	85
Entering appearance	10
Entering 3 continuances	30
Orders and judgment, 4	2 00
Swearing 5 witnesses	50
Certificates and seals	
Oath with certificate	
Issuing 3 subpœnas for 8 witnesses	1 25
Taking bond	
Swearing and empaneling jury	
Assessing damages	50
Issuing commission to take deposition	
Cop interrogatories with certificate and seals	
Issuing *scire facias*	
Entering interlocutory judgment	
Entering final judgment	50
Entering indictment	
Taking cost and cop thereof	25
Issuing 1 execution	50
Issuing writ of possession	
Issuing capias	
Entering sheriff's return on execution	50
Taking deposition	
Transcript to supreme court	
Final record	
Docketing 2 motions	20
Total clerk's fees	$7 55

Sheriff's Fees.

Executing writ and copy	
Executing capias	
Summoning 8 witnesses	$4 00
Serving notice to take deposition	
Executing *scire facias*	
Executing attachment	
Executing sequestration	
Executing citation and garnishee	
Taking bond of recognizance	
Commitment and release of prisoner	
Levying execution	
Returning execution	
Executing and returning writ of possession	
Jury fee	
Endorsing forfeiture of bond	50
Total sheriff's fees	4 50

Sheriff's costs paid.

BECKETT.

Jury fee	
Witness attendance	1 00
Printer's fee	
Total fee	1 00

Justice's costs and fees	6 40
Judge's fees	3 00
Sheriff's fees	4 50
Clerk's fees	7 55
Witness' fees	1 00
Total amount of costs	$22 45

A true bill of costs.

W. M. GILL, *Clerk*,
By FRANK CLEMENT, *D. C.*

Sheriff's Return.

Came to hand the 5th day of May, 1891, at 3.10 o'clock p. m., and executed the 5th day of May, 1891, at 3.25 o'clock p. m., by first calling upon H. W. Nott, the local agent of the within-named defendant, at Cameron, Texas, to point out property of defendant company upon which to levy this writ, and said Nott, as agent of defendant company, pointed out to me one box car of the defendant branded by defendant as follows: "G., C. & S. F.," "1318," "Santa Fé route," which I on said 5th day of May, 1891, levied on and advertised for sale, at public auction, at the depot grounds of the defendant company, in Cameron, Milam county, Texas, to be had on Saturday, the 16th day of May, A. D. 1891, between the hours of 10 o'clock a. m. and 4 o'clock p. m., to the highest and best bidder for cash by posting notices of said sale at three public places in Milam county, Texas, one of which was the court-house door of said county and one at the place of sale and one at another public place in Milam county, Texas, for at least ten days prior to said sale day, and on said 16th day of May, 1891, within the hours of sale, to wit, about 11 o'clock a. m., in accordance with said advertisement, I offered for sale said property to the highest and best bidder for cash (said property being then and there present at said sale) at public auction and E. B. Muse bid for said property the sum of one hundred and sixteen and $\frac{71}{100}$ dollars, and, that being the highest and best bid for said property, it was struck off to said Muse, and, he having complied with said bid, I made him a bill of sale to said property and delivered same to him, and with said proceeds I satisfied said execution, principal, interest, and all costs, together with the further costs of executing this writ, and now here make this return.

W. W. CHAMBERS,
Constable of Milam County, Texas.

Costs of Executing this Writ.

Levy of execution	$1 50
Advertising property for sale	1 00
Mileage on same	2 50
Commission on sale, $116.71	4 15
Bill of sale	1 00
Return execution	75
	$10 90

Paid in full.

Received of W. W. Chambers $85.70 in full for Hefley & Lewis, judgment and costs belonging to them.

W. T. HEFLEY,
Attorney for Plaintiffs.

THE STATE OF TEXAS, }
County of Milam. }

I, W. M. Gill, clerk of the county court of Milam county, Texas, do hereby certify that the above and foregoing (same being the instrument to which this certificate is attached) is a true and correct copy of the original execution and the constable's return thereto issued out of the said court in cause No. 590, Hefley & Lewis *vs.* Gulf, Colorado and Santa Fé Railway Company, said original execution being now on file with the papers of said cause in the office of the clerk of said county court of Milam county, Texas.

Witness my hand and official seal, at office in the city of Cameron, Texas, this 9th day of March, A. D. 1893.

W. M. GILL,
[SEAL.] *Clerk County Court, Milam Co., Texas,*
By JOHN C. OXENFORD,
Deputy Clerk.

[Endorsed:] File No. 590. Hefley & Lewis *vs.* Gulf, Colorado and Santa Fé R'y Co. Execution.

Judgment, April 14, 1891.

Debt	$82 80
Costs	22 45
Total	$105 25

and interest at 8 per cent.

Issued May 5th, 1891. W. M. Gill, clerk, by Frank Clement, D. C. Filed the 16th day of May, A. D. 1891. W. M. Gill, clerk, by —— ——, deputy.

Office Supreme Court U. S.
FILED.
APR 29 1893
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

THE GULF, COLORADO & SANTA FÉ RAILWAY CO., PLAINTIFF IN ERROR,

v.

HEFLEY & LEWIS.

No. 870.

In Error to the County Court of Milam County, Texas.

REPLY TO MOTION TO DISMISS.

Motion is made to dismiss the writ of error herein on the ground that same has been satisfied through involuntary payment under execution, levy and sale, and hence there is now no existing "matter in controversy."

The motion is answered by the ruling of this Court in *Dakota County* v. *Glidden* (113 U. S. 222, 224), thus:

"There can be no question that a debtor against whom "a judgment for money is recovered may pay that judg- "ment and bring a writ of error to reverse it, and if re-

"versed can recover back his money. And a defendant "in an action of ejectment may bring a writ of error, "and, failing to give a supersedeas bond, may submit to "the judgment by giving possession of the land, which "he can recover if he reverses the judgment by means of "a writ of restitution. In both these cases the defendant "has merely submitted to perform the judgment of the "court, and has not thereby lost his right to seek a re-"versal of that judgment by writ of error or appeal."

The case involves serious conflict between the Federal Act to regulate commerce and the local statute of Texas relating to the same subject, and the judgment below is against the right set up by plaintiff in error under said Federal Act. It is of great importance to this plaintiff in error that the questions involved be reviewed and determined by this Court upon the pending writ. To that end, motion to advance the cause was submitted on its behalf at the last term, and denied. The case is prosecuted in utmost good faith. Application was seasonably made for the writ of error herein, with tender of supersedeas bond, but copy of the record in the State Court was inadvertently not forwarded to the undersigned therewith, and, before same could be secured as the necessary basis for such application, execution was issued upon the judgment of the Court below and satisfied by levy and sale of the Company's property.

We ask that the motion to dismiss be denied.

Respectfully submitted.

GEO. R. PECK,
A. T. BRITTON,
A. B. BROWNE,
Attys. for Plaintiff in Error.